

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alfredo Gonzalez	Team: Squad #7	CCRB Case #: 201509839	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 11/16/2015 8:30 AM	Location of Incident: Inside § 87(2)(b)	Precinct: 75	18 Mo. SOL 5/16/2017	EO SOL 5/16/2017	
Date/Time CV Reported Wed, 11/18/2015 8:44 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 11/18/2015 8:44 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Terry Brienza	01738	932363	WARRSEC
2. DT3 Thomas Napolitano	3282	940682	WARRSEC
3. DT3 Michael Walsh	4561	945089	WARRSEC

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Ravi Narayan	4407	930799	WARRSEC

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Terry Brienza	Abuse: Terry Brienza entered and searched § 87(2)(b) in Brooklyn.	
B.DT3 Thomas Napolitano	Force: Det. Thomas Napolitano used physical force against § 87(2)(b)	
C.DT3 Michael Walsh	Force: Det. Michael Walsh used physical force against § 87(2)(b)	
D.DT3 Thomas Napolitano	Abuse: Det. Thomas Napolitano refused to provide his name and shield number to § 87(2)(b)	
E.DT3 Michael Walsh	Abuse: Det. Michael Walsh refused to provide his name and shield number to § 87(2)(b)	

Case Summary

On November 16, 2015, at approximately 8:30 a.m., Det. Terry Brienza, Det. Thomas Napolitano, Det. Michael Walsh, and Det. Ravi Narayan entered and searched § 87(2)(b) in Brooklyn, pursuant to an arrest warrant for § 87(2)(b) (**Allegation A**). Upon entry, Det. Napolitano and Det. Walsh attempted to place § 87(2)(b) under arrest, during which time, a struggle ensued. During the struggle, Det. Napolitano allegedly punched § 87(2)(b) on the shoulder more than five times (**Allegation B**). § 87(2)(b) then alleged that he was taken to the floor, where Det. Walsh proceeded to kick him in his lower back one to two times (**Allegation C**). After being handcuffed, § 87(2)(b) allegedly asked the officers for their identification, but he received no response (**Allegations D and E**). § 87(2)(b) was taken directly to Kings Criminal Court and was not rearrested.

Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation § 87(2)(b)
- As of February 5, 2016, § 87(2)(b) has not filed a Notice of Claim against the City of New York (Board Review 01).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (Board Review 03).
- Det. Brienza has been a member of the NYPD for 12 years. He has been the subject of four allegations stemming from two cases. None of the allegations were substantiated.
- Det. Napolitano has been a member of the NYPD for 10 years. He has been the subject of 15 allegations stemming from eight cases. In sensitive CCRB case 201010420, a force allegation was substantiated against him for force he used that resulted in a civilian being placed in a coma. Charges were recommended by the Board and the NYPD has yet to receive a disposition.
- Det. Walsh has been a member of the NYPD for eight years. He has been the subject of nine allegations stemming from three cases. None of the allegations were substantiated.
- § 87(2)(g)

Findings and Recommendations

Allegations Not Pleaded

- **Abuse:** A refusal to provide name and shield allegation has not been pleaded against Det. Brienza because § 87(2)(b) was able to provide Det. Brienza's shield number to the CCRB, thereby indicating that he was able to attain identification.
- **Abuse:** A refusal to provide name and shield allegation has not been pleaded against Det. Narayan because, by all accounts, he was outside of the apartment at the time in which § 87(2)(b) allegedly asked for the officers' identifications.

Explanation of Subject Officer Identification

- Det. Brienza was the lead investigator assigned to a bench warrant for an individual named Deondre Barnett – which listed his residence as § 87(2)(b) in Brooklyn, and was the officers' primary reason for being at the residence – and as a result, he was responsible for conducting all investigative actions for the case. Considering that the entry and search were facilitated by the information Det. Brienza had gathered and provided to the aforementioned detectives, **Allegation A** has been pleaded solely to him.
- § 87(2)(b) described the two officers that used physical force against him when placing him in handcuffs as a white male that was 6'3" tall, in his mid-30s, and with black hair, and a white male that was 5'6" tall, with a chubby build, bald, and with blue eyes. Both physical descriptions match Det. Napolitano's and Det. Walsh's physical characteristics respectively, and they both acknowledged placing § 87(2)(b) in handcuffs. Therefore, **Allegations B and C** have been pleaded against them.

Allegation A –Abuse of Authority: Det. Terry Brienza entered and searched § 87(2)(b) in Brooklyn.

It is undisputed that Det. Brienza, Det. Napolitano, and Det. Walsh entered and searched § 87(2)(b) in Brooklyn in relation to an active arrest warrant for § 87(2)(b).

It is also undisputed that there was an active arrest warrant for § 87(2)(b) that listed § 87(2)(b) as his address (Board Review 04).

§ 87(2)(b) alleged that after an officer knocked on the door forcefully, he opened the door approximately three quarters of the way, after which, the officers informed § 87(2)(b) that they had a warrant for "this address." § 87(2)(b) inquired if the warrant was in his name, but he received no response. The officers then asked him who lived in the apartment, and § 87(2)(b) informed him that it was his mother's apartment. Immediately after, PO Napolitano allegedly stepped into the apartment without consent, which forced § 87(2)(b) to move out of the way. Det. Brienza and Det. Walsh then entered the apartment as well. After a brief struggle, § 87(2)(b) was detained and two officers then searched the apartment. § 87(2)(b) was able to observe the officers enter the bedrooms, but he could not see what they did inside (Board Review 05).

Det. Brienza testified that he was originally at the location to execute a bench warrant for Deondre Barnett. The bench warrant was issued on § 87(2)(b), and it listed § 87(2)(b) address as § 87(2)(b). As part of the investigative process, Det. Brienza ran the address to see whether any other warrants were attached to it. It was during this search that an active arrest warrant for § 87(2)(b) with a photograph, was found. Upon arrival, Det. Brienza knocked and inquired who lived in the apartment. A brief discussion ensued through the door, but Det. Brienza could not recall the specific conversation that took place; however, he recalled that a male voice responded with § 87(2)(b) when he asked about the apartment's resident. Eventually, § 87(2)(b) opened the door and Det. Brienza was able to receive visual confirmation that the male voice belonged to § 87(2)(b) the subject of the arrest warrant. Det. Brienza then requested permission to enter, but § 87(2)(b) refused. Eventually, Det. Brienza and the other officers pushed the door open and entered the apartment to place § 87(2)(b) under arrest. After

§ 87(2)(b) was secured, Det. Brienza and Det. Walsh searched the bedrooms, closets, and all areas where an individual could hide in the apartment. Det. Brienza emphasized that no drawers were opened during the search of the apartment (Board Review 06). Det. Napolitano's and Det. Walsh's testimonies were highly consistent with Det. Brienza's and did not differ in any significant way (Board Review 07, 08).

An arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within. Payton v. New York, 445 U.S. 573 (1980) (Board Review 09). Officers in possession of an arrest warrant may make forced entry into a residence after giving or making a reasonable attempt to give notice of their authority and purpose to the occupants. Criminal Procedure Law §120.80 (4) (Board Review 10). Once inside a private dwelling, officers are entitled to perform a "protective sweep" if there exists a reasonable threat to the safety of the officers and of any occupants in the dwelling. Maryland v. Buie, 494 U.S. 325 (1990) (Board Review 11).

The active arrest warrant for § 87(2)(b) listing his residential address as § 87(2)(b) in Brooklyn gave the officers reason to believe that § 87(2)(b) resided at the location, which was then confirmed when § 87(2)(b) opened the door and the officers verified his identity visually. Whether the officers entered the apartment forcefully thereafter or simply stepped in without consent, as § 87(2)(b) alleged, is insignificant given that the officers had the justification to forcibly enter the apartment after confirming § 87(2)(b)'s presence and after being denied entry upon request. The subsequent search of the apartment, which was indisputably limited to only searching where a person could hide, was also justified given that it was necessary to secure the premises to make sure there were no other individuals in the apartment that could pose a threat to the officers. Furthermore, considering that a second individual – § 87(2)(b) – had an active bench warrant that also listed his address as § 87(2)(b) in Brooklyn, the officers could have reasonably feared that if he was inside, he could pose a danger to them.

§ 87(2)(g)

Allegation B – Force: Det. Thomas Napolitano used physical force against § 87(2)(b)

Allegation C – Force: Det. Michael Walsh used physical force against § 87(2)(b)

§ 87(2)(b) alleged that he was punched numerous times in the back by Det. Napolitano as the two detectives struggled to handcuff him. Subsequently, § 87(2)(b) alleged he was taken to the floor and kicked in the lower back one to two times by Det. Walsh. § 87(2)(b) then "gave up" and allowed the officers to handcuff him. § 87(2)(b) admitted that he passively resisted arrest by tensing his body and refusing to give up his arms. § 87(2)(b) also acknowledged that he was commanded by an officer to stop resisting and to put his hands behind his back, but he did not do so because he was not told the reason for his arrest. § 87(2)(b) alleged that he sustained a swollen right hand, though he was unsure how he sustained it, lower back pain, and bruises to

his back (Board Review 05). § 87(2)(b) provided photographs, which were reportedly taken on November 16, 2015, that showed redness to his upper right back (Board Review 12, 13).

Det. Napolitano testified that § 87(2)(b) was commanded to put his hands behind his back, but began pulling away immediately. He and Det. Walsh then took § 87(2)(b) down onto a couch that was nearby. Det. Napolitano and Det. Walsh struggled to wrestle § 87(2)(b)'s arms from underneath him for approximately one minute. Det. Napolitano denied punching or kicking § 87(2)(b) during the struggle, and he did not observe Det. Walsh do so. Det. Napolitano did not observe any injuries on § 87(2)(b) nor did § 87(2)(b) complain of any (Board Review 07). Det. Walsh's testimony did not differ in any significant way from Det. Napolitano's. Det. Walsh denied punching or kicking § 87(2)(b) and he did not observe Det. Napolitano do so (Board Review 08). Det. Brienza was present when the struggle occurred, and generally corroborated Det. Napolitano's and Det. Walsh's testimonies. He denied that § 87(2)(b) was ever punched or kicked by either Det. Napolitano or Det. Walsh (Board Review 06).

§ 87(2)(b)'s medical records indicate that § 87(2)(b) complained of injuries to his right hand, right scapula, and bilateral back, which were precipitated by an altercation with the NYPD. The x-rays determined that there was a 1mm bone density and mild swelling to the right hand; however, his other injuries were inconclusive (see Privileged Documents).

Officers may use the minimum amount of force necessary to take into custody a violent or resisting individual. NYPD Patrol Guide, Section 203-11 (Board Review 14).

§ 87(2)(g)

[REDACTED]

Allegation E – Abuse of Authority: Det. Michael Walsh refused to provide his name and shield number to § 87(2)(b)

Det. Napolitano recalled that § 87(2)(b) asked for his identification while Det. Brienza and Det. Walsh were securing the apartment, and he stated that he provided it willingly. Det. Napolitano also stated that his shield was around his neck and clearly visible (Board Review 07). Det. Walsh did not recall whether § 87(2)(b) asked for his or any other officer's information, but he stated that all of the detectives had their badges out and in plain view (Board Review 08). Det. Brienza testified that he could not recall whether § 87(2)(b) ever requested any officer's ID or information; however, he recalled identifying himself to § 87(2)(b) upon initiating contact (Board Review 06).

§ 87(2)(g)

Investigator:	Signature	Print	Date
Squad Leader:	Title/Signature	Print	Date
Reviewer:	Title/Signature	Print	Date